

UN experts voice concern over adverse impact of free trade and investment agreements on human rights

GENEVA 2 June 2015 - *A number of free trade and investment agreements, such as the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP), are currently being negotiated. A group of UN experts* have issued the following statement to express concern about the secret nature of drawing up and negotiating many of these agreements and the potential adverse impact of these agreements on human rights:*

“While trade and investment agreements can create new economic opportunities, we draw attention to the potential detrimental impact these treaties and agreements may have on the enjoyment of human rights as enshrined in legally binding instruments, whether civil, cultural, economic, political or social. Our concerns relate to the rights to life, food, water and sanitation, health, housing, education, science and culture, improved labour standards, an independent judiciary, a clean environment and the right not to be subjected to forced resettlement.

As also underlined in the UN Guiding Principles on Business and Human Rights, States must ensure that trade and investment agreements do not constrain their ability to meet their human rights obligations (Guiding Principle 9).

Observers are concerned that these treaties and agreements are likely to have a number of retrogressive effects on the protection and promotion of human rights, including by lowering the threshold of health protection, food safety, and labour standards, by catering to the business interests of pharmaceutical monopolies and extending intellectual property protection.

There is a legitimate concern that both bilateral and multilateral investment treaties might aggravate the problem of extreme poverty, jeopardize fair and efficient foreign debt renegotiation, and affect the rights of indigenous peoples, minorities, persons with disabilities, older persons, and other persons leaving in vulnerable situations. Undoubtedly, globalization and the many Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) can have positive but also negative impacts on the promotion of a democratic and equitable international order, which entails practical international solidarity.

Investor-state-dispute settlement (ISDS) chapters in BITs and FTAs are also increasingly problematic given the experience of decades related arbitrations conducted before ISDS tribunals. The experience demonstrates that the regulatory function of many States and their ability to legislate in the public interest have been put at risk.

We believe the problem has been aggravated by the “chilling effect” that intrusive ISDS awards have had, when States have been penalized for adopting regulations, for example to protect the environment, food security, access to generic and essential medicines, and reduction of smoking, as required under the WHO Framework Convention on Tobacco Control, or raising the minimum wage.

ISDS chapters are anomalous in that they provide protection for investors but not for States or for the population. They allow investors to sue States but not vice-versa. The adoption in 2014 of the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration is an important step to address the problem of the typically confidential and non-participatory nature of investor-State agreements. Greater transparency should serve to remedy incoherence between current modes of investment with human rights considerations.

We invite States to revisit the treaties under negotiation and ensure that they foster and do not hinder human rights. If the treaties in question include a chapter on investor-State-dispute-settlement, the terms of reference of the arbitrators must be so drafted that interference in the domestic regulation of budgetary, fiscal, health

and environmental and other public policies are not allowed.

Moreover arbitration tribunals should allow public review and its awards must be appealable before the International Court of Justice or a yet to be created an International Investment Court working transparently and with accountability. There must be a just balance between the protection afforded to investors and the States' *responsibility to protect* all persons under their jurisdiction.

We recommend that:

All current negotiations of bilateral and multilateral trade and investment agreements should be conducted transparently with consultation and participation of all relevant stakeholders including labour unions, consumer unions, environmental protection groups and health professionals.

All draft treaty texts should be published so that Parliamentarians and civil society have sufficient time to review them and to weigh the pros and cons in a democratic manner.

Ex ante and *ex post* human rights impact assessments should be conducted with regard to existing and proposed BITs and FTAs.

The Parties should detail how they will uphold their human rights obligations if they ratify the BITs and FTA's under negotiation.

Given the breadth and scope of the agreements currently under negotiation, robust safeguards must be embedded to ensure full protection and enjoyment of human rights.”

ENDS

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